

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

ORDER

Cr. No. 97-276(2) (MJD)

Robert George Jefferson,

Defendant.

Jeffrey S. Paulsen, Assistant United States Attorney for Plaintiff.

Defendant is pro se.

This matter is before the Court on Defendant's motion to recall the mandate and for an evidentiary hearing pursuant to Rule 60 (b)(2) and (6) of the Federal Rules of Civil Procedure.

Defendant requests that the Court recall the Mandate in this case and allow him to present evidence to the Court in the form of testimony from co-defendant Willie Hart consistent with an interview Hart gave to a reporter for the St. Paul Pioneer Press. Defendant asserts that Hart told the reporter that Defendant did not tell Hart to firebomb the Coppage home. Hart also told the reporter that he

wrote a letter to this Court informing the Court that he was being setup, but that the Court did not respond. Defendant asserts his previous habeas proceedings were effected by the lack of Hart's testimony.

Despite Defendant's attempt to style this motion as one pursuant to the Fed. R. Civ. P. 60(b), it is, in fact, a collateral challenge to his conviction. This Court cannot consider a successive habeas petition unless an appropriate order is issued by the appropriate court of appeals. 28 U.S.C. § 2244 (b)(3)(A). No such order has been issued. Therefore, this matter is not appropriately before this Court.

IT IS HEREBY ORDERED that Defendant's Motion Pursuant to Rule 60(b)(2) and (6) [Doc. No. 1549] is DISMISSED.

Date: October 30, 2011

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court